U.S. Small Business Administration

8(a) Contractor's Corner

Volume 5, Number 2 September 2003

MONTANA DISTRICT OFFICE FY 2003
8(a) CONTRACTING ACCOMPLISHMENTS

The Montana District Office 8(a) division had a fantastic year with contracts totaling $1,335,081,165.78.

The SBA cordially thanks all the Procurement Agencies who support the 8(a) program and sends its congratulations to the 8(a) firms.

MONTANA SBA OFFICE RANKS #1 IN THE COUNTRY
Michelle Johnston, District Director

The impact on Montana's mostly rural economy can be felt in every corner of the state and across all 145,552 square miles. Businesses in forty-six of Montana's fifty-six counties benefited from SBA guaranteed loan financing this past fiscal year, boosting economies throughout the state.

The reason SBA's guaranteed loan program is so successful in Montana is due to the responsiveness of Montana's lending community to small business. Currently, there are 280 approved SBA participating lenders in Montana. This past fiscal year, 102 (37%) of those lenders utilized SBA's guaranteed loan programs.

SBA guaranteed 495 loans totaling $78,357,341. Of these loans, 478 for $72,250,341 were made through SBA's Guaranty Loan Program which provides short or long term financing for small business start-up or expansion needs. Seventeen loans totaling $6,107,000 were made through SBA's 504 Certified Development Company program which provides long term fixed rate financing for land, buildings and equipment.

SBA and its resource partners reached out to nearly 12,000 entrepreneurs.

CHIEF OF CAPITAL ACCESS RETIRES

Doug Crachy began his career with SBA in 1984 as a Loan Assistant and worked his way up to Chief, Capital Access. Before joining the SBA, Mr. Crachy held positions with Farmers Home Administration, Gallatin Homes Corporation, Quality Roofing & Sheet Metal and the U.S. Department of the Army.

Doug and his wife Doris reside in Elliston, MT. They enjoy the outdoors, hunting, camping, snowmobiling and spending time with their grandchildren. Congratulations, Doug!

NEW 8(a) FIRM

CJM CONSTRUCTION CO, INC.
Anaconda, MT

CJM Construction Co., Inc., is a full service construction company that performs a variety of heavy civil work and has a branch office in Nevada.

MINORITY SMALL BUSINESS PERSON OF THE YEAR SELECTED

Raul Luciani, owner, CP of Bozeman/Maintenance Patrol, was selected as both the State and Regional Minority Small Business Person of the Year for 2003. Congratulations Raul!

THE 8 (a) ADVANTAGE
Richard Riemer

Are 8(a) graduates slated for success or doomed to failure? There is no simple way to go from the world of 8 (a) contracting to the world of competitive contracting. Graduation from the program is not the successful completion of curriculum that results in the ability to survive in competitive contracting; it is simply the elapse of nine years. Survival requires a plan to become competitive. What should a company do to become competitive?

A specific plan is needed for using the 8(a) program to build a business that can survive long after graduation. First, use your 8(a) certification to get a small sole source *start-up* contract which establishes a base of operations. Use that base to compete on and win some larger 8(a) *support* contract*s* to fund corporate development, like hiring recruiters and proposal development experts. Then use those contracts to build agency relationships and to partner with large prime contractors to win long-term subcontracts. Convince clients to add additional, technically more advanced work to 8(a) contracts and then re-compete that work outside the 8(a) program. Finally, leverage this experience into winning competitive contracts.

Each step requires the development of corporate capabilities that will support moving to the next step. The government is not going to award a 50-person 8(a) support contract to a newly certified company that has only a few employees and no federal contracts. And, large companies do not award subcontracts to minority companies unless the minority company contributes technical capabilities. A company without strong recruiting and proposal writing capabilities is not going to win competitive contracts.

A small sole source start-up contract is the first step. The work may be as mundane as writing a user's manual or debugging some computer programs, or providing help-desk staff. It really doesn't matter; the purpose is to get started. Getting this first 8(a) contract takes energy and the perseverance to knock on agency doors. The question is which government doors? The most effective approach is through government technical contracts met while performing work for previous employers, before you started your business. Another approach, requiring some luck, is meeting with Small and Disadvantaged Business Utilization officers. They do not award contracts, but they can point you in the direction of a technical office that may award a contract. A start-up contract may only be for a few hundred thousand dollars, but it is a foot in the door of government contracting and is important in learning how to do business with the government. Even more important is that a start-up contract provides the client reference needed in order to win a larger, 8(a) support contract.

Winning a support contact is a major step up in corporate development. It establishes a revenue base, it provides client interface and agency acknowledgment and it offers the potential to develop a relationship with one or more of the client's prime contractors. These contracts are *cash cows* and very competitive among 8(a) companies. It is not unusual for 200 companies to attend a bidders conference on an 8(a) support contract. Such contracts are usually re-competed every five years and the employees of the graduated 8(a) incumbent then become employees of the new 8(a) firm. The prerequisites for an 8(a) support contract are an excellent reference from the start-up contract client, an understanding of the agency's requirements, a good technical proposal and good resumes, financial stability and cost competitiveness against other 8(a) companies. The key to winning is to understand that agencies are possessive about their 8(a) support contract employees.

They feel a need to take care of their contract employees who are being transferred from one 8(a) firm to another every five years.

At this stage of the plan, the 8(a) company is still not going to be able to compete effectively on non-8(a) work because the company lacks the corporate experience and will get a low evaluation against established companies with significant experience. This is also a dangerous stage for 8(a) companies because they can fall into a false sense of security. Often with more than a hundred employees and a good revenue base, they think they are successful. There is a temptation to use the revenue for prestigious office space, company automobiles, or unnecessary executive assistants. The key at this point is to put all resources into getting work that will not disappear, because after graduation, they can no longer bid on their existing contracts. Using resources to win another 8(a) contract at this point may provide some extra for corporate profit, but does little to build a permanent business.

One approach to permanent work is convincing a client to add new work to an 8(a) support contract, and later re-compete that work outside the 8(a) program. For example, although the contract may be for data processing support, the agency could assign higher-level program analysis and systems engineering tasks. Once the agency assigns this work to the 8(a) firm, the company is in a good position to lobby for the work to be re-competed separately from the 8(a) support contract re-competition. For example, if the company has been performing well in developing sophisticated computer-based training systems as part of an 8(a) support contract, the government is not likely to risk turning that work over to the next (8a) that wins the *original* support contract. It is in the company's interest to convince the government to make this procurement a small business set-aside. The 8(a) firm will then be the incumbent for the procurement!

Another effective approach to winning work that can be kept after graduation is getting subcontracts from large prime contractors. These are procurements that may exceed $100 million annually, so even a small percentage of this work is valuable to the 8(a) firm that is looking beyond graduation. But prime contractors select subcontractors for their proposal team for one, and only one, reason to improve their chances of winning. The best credential for getting on the team of a top contender is having the respect and confidence of the client. If the agency recommends an 8(a) firm to a contending prime, the 8(a)firm will be on the team. If the prime wins, the 8(a) company will have a subcontract that could go on for years after graduation. The prime will expect the 8(a) firm to propose competitively qualified people for its part of the contract and to be very cost competitive. The subcontractor will have to carry its own weight in the proposal effort of the prime (which is a good opportunity for an 8(a) company to learn more about proposal writing.)

The final step in the plan is winning the first competitive contract *outside* the 8(a) program. This is stepping out into the unsheltered world of companies that have been winning procurements for many years. These are companies with many resources, numerous agency contacts, very capable professional staffs, and extremely good proposal writing capabilities.

Winning a competitive procurement requires being the best value to the government. This means convincing the government that your company can do the work better (or at least as well) as any other company at a lower cost (or at least essentially the same cost). The company must have a marketing research capability to target procurements. It must have the technical and programmatic capability to understand what the government needs. It must have the capability to write a winning proposal. It must be competitive.

All of these capabilities do not appear overnight. They are developed by using the 8(a) program to take the company through a series of steps, from an initial start-up contract, to an 8(a) support contract, to a small business set-aside award (of converted 8(a) work) and then performing as a subcontractor to a major prime.

The 8(a) companies that survive graduation have one thing in common. They have developed services or products that were over and beyond those needed just for 8(a) contracts. These were developed into businesses that were successfully marketed to clients. Each 8(a) company transformed itself into a competitive organization. Corporate functions were developed in a competitive mode. The individuals managing

these companies may have been able to build successful businesses without the 8(a) program, but as 8(a) firms, they used the advantages of the 8(a) program to build competitive businesses. They understood the pitfalls associated with the program and they had a vision of where their companies were going.

They could answer this question: How do you want your company to be perceived in the federal marketplace? The answer can be summed up in a single word. Competitive.

CONTRACT LAW

AT&L Knowledge Sharing System

Q. What justifications are required for NOT exercising an option?

The Scenario:

Satisfactory contractor is performing a firm-fixed price award fee service contract, with options remaining at approximately $3M/year. No modification history over the first two years making any major changes to the Statement of Work (SOW) indicating a change in mission or scope. User sends letter to CO requesting option three not be exercised based on a list of changes to the SOW, which in his opinion, are out of scope. CO analyzed the letter using the SOW and letter in comparison making the determination there is no change in scope. Additionally, the two required D&Fs, options and responsibility are clear indicators that there is nothing preventing the exercise of the third year option. At this point, a market survey has not been completed, but assume it has and it also supports exercising the option.

The Question:

Does the CO require any justification for not exercising an option based on the above scenario? And what is the litigation risk if the option is not exercised?

A. Generally, when the government enters into an option contract, there is no obligation to exercise any of the future options. However, it depends on the specific terms of the contract itself. If your contract states that the government will exercise at least 2 options, for example, then we are required to exercise at least 2 options. However, if there is no minimum requirement, then we can decide not to exercise an option at any time. There would be no litigative risk in that case. Hence, unless there is some special option requirement clause, the government is completely entitled not to exercise an option at any time. Although an explanation to the contractor is not generally required, it wouldn't hurt to explain that you are going to re-solicit a new contract because there are significant changes to the existing contract.

Q. **Prompt Payment Act**

The Question:

Can Prompt Payment Act interest penalties apply to cost contracts?

A. Sure. Once the government receives a proper invoice for costs that are allowable and allocable to the contract, we must pay that invoice in the appropriate time.

FAR 32.904 (e) states:

(e) Cost reimbursement contracts for services. For purposes of computing late payment interest penalties that may apply, the due date for making interim payments on cost reimbursement contracts for services is 30 days after the date of receipt of a proper invoice.

OSHA IS HERE……. TO HELP!

Many elements come into play when establishing and maintaining a small business. Not the least of which is occupational safety and health management systems. Employers are subjected to a myriad of rules affecting day to day operations. The paperwork associated with safety rules can be overwhelming. There have been major changes to the Occupational Safety & Health Administration recordkeeping rules under the old 1904 recordkeeping rule. These include: the new OSHA Form 300 (Log Of Work-Related Injuries and Illnesses) has been simplified and on smaller paper; maximum flexibility has been provided so employers can keep all the information on computers; there has to be a "significant" degree of aggravation before a preexisting injury or illness becomes work related; the term "lost workdays" is eliminated and the rule requires recoding of days away, days of restricted work and transfers to another job. Another major change is that employers are required to establish a procedure for employees to report injuries and illnesses.

Keeping track of this and keeping a safe jobsite may seem stressful but OHSA can help. OHSA offers a free consultation service and employers can find out about worksite hazards, improve safety systems and qualify for a one-year exemption from routine OHSA inspection. The consultation is a voluntary activity that you must request. The consultation takes place on-site, no citations are issued and it's confidential. Additionally the consultant will:

- Assist in developing and maintaining an effective safety and health program
- Provide training and education to you and employees
- Identify kinds of help available if further assistance is needed
- Suggest approaches or options for solving safety problems

Using the kind of assistance offered by OSHA will enable your organization to ensure compliance with the regulations that affect it and more importantly create a safe workplace environment. Check out www.osha.gov today for help on how to accomplish this. The website has easy access to find the changes to the record keeping rule and the consultation link.

CHANGING THE RFP PROCESS

Fedmarket.com

How much change can you make in the RFP process once the RFP has been issued? Can you change the due date? Can you modify the requirements or other information contained in the RFP?

Before attempting to answer these questions, let's identify the types of changes that may be considered and their significance.

The first category is that of the "no change" or "minor change", including modifications to correct minor errors, ambiguities, and typos. Second, there is "changing the deadline." Finally, there are "material changes"—changes in the published evaluation criteria or weights, in the mandatory conditions, and major changes in the requirements or technical information provided in the RFP.

The rules regarding change are established governing law, policies, information contained in the RFP, and established practices. The nature of permissible changes varies within and between jurisdictions. There is no established standard in this area. The discussion that follows deals with each type of change and how it each is handled in different jurisdictions and organizations.

No Change

Obviously, change disrupts the smooth execution of the process. Too much change and suppliers will abandon their efforts to prepare an effective proposal. Ideally, there are no changes in the RFP as issued. This idealized situation does occur, but infrequently. Minor changes are common. However, even with minor changes, there is a limit to the amount of change that can be introduced while maintaining a managed process.

Radical changes in RFPs after they are issued are unusual and will probably result in cancellation of the RFP. Some organizations, rather than suffering the embarrassment of canceling an RFP, simply let it run its course and then award no contract.

Minor Change

These changes are often identified by the issuer in reviewing the RFP that has been issued, or in response to hone calls from suppliers about obvious omissions, error or ambiguities in the RFP. It is common practice for organizations to amend RFPS shortly after they have been issued. In some jurisdictions, this practice is sanctioned by law or by policy.

Extension of the Deadline

Sometimes, for quite legitimate reasons, the deadline for submission is extended. However, this change is, at best, awkward. At worst, it is unfair and may be challenged by a supplier.

In open competitions, some suppliers may receive the RFP and, on the basis of the deadline, decide to "no bid." In reviewing the document, they concluded that there wasn't sufficient time for them to prepare a proper proposal. If, two weeks later, the issuer announces an extension of the deadline by two weeks, they still may "no bid". The extensions provided them with no additional time. Those firms, on the other hand, that had begun to create their proposal when they received the RFP, would have an extra two weeks to prepare. For these reasons, firms that initially decided to "no bid" may be aggrieved by the extension and complain about the fairness of the process.

In competitions where the suppliers were pre-qualified and therefore known to the issuer, the issuer could seek the agreement of all the potential bidders to the extension. In this case, if accepted by all, it would be implemented. If not, the original deadline would survive. To do otherwise would risk a challenge to the fairness of the process.
In competitions where the suppliers attend the suppliers meeting, the issuer could seek agreement as with the pre-qualified group.

In some jurisdictions, this practice is sanctioned by law or by policy.

Material Changes

Material changes involve important new data or substantial changes in the content of the RFP. For example, material changes would be: published weight of an evaluation factor was increased from 10 percent to 50 percent; a new mandatory condition was imposed; or 10 pages of new detailed requirements were added. All of these constitute material changes.

It is difficult to introduce major changes and still defend the process as being fair. Often, organizations are forced to cancel the RFP when these types of changes are identified. It is much easier to "get it right" the first time.

In some jurisdictions, the introduction of major changes after issuing the RFP is prohibited by law, by policy or by practice.

If you have a news item you would like to have published in a future newsletter, contact Mary Brilakis, Editor, at (406) 441-1081, or, e-mail: mary.brilakis@sba.gov.